

ESTTA Tracking number: **ESTTA342395**

Filing date: **04/14/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	IDOC Productions, Inc.
Granted to Date of previous extension	04/14/2010
Address	45 East 79th Street New York City, NY 10028 UNITED STATES

Attorney information	James A. Trigg Kilpatrick Stockton LLP 1100 Peachtree Street NE Suite 2800 Atlanta, GA 30309 UNITED STATES jtrigg@kilpatrickstockton.com, svayner@kilpatrickstockton.com, tadmin@kilpatrickstockton.com, KTeilhaber@KilpatrickStockton.com Phone:404-815-6500
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Applicant Information

Application No	77790645	Publication date	12/15/2009
Opposition Filing Date	04/14/2010	Opposition Period Ends	04/14/2010
Applicant	Broadway Kids Care #603 321 W. 44th Street New York, NY 10036 UNITED STATES		

Goods/Services Affected by Opposition

Class 036. All goods and services in the class are opposed, namely: Charitable fund raising
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1957281	Application Date	09/06/1994
Registration Date	02/20/1996	Foreign Priority Date	NONE
Word Mark	THE BROADWAY KIDS		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 041. First use: First Use: 1993/09/00 First Use In Commerce: 1993/12/00 entertainment services, namely live performances by a musical group

U.S. Registration No.	2661833	Application Date	02/21/2001
Registration Date	12/17/2002	Foreign Priority Date	NONE

Word Mark	THE BROADWAY KIDS
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 009. First use: First Use: 1993/09/01 First Use In Commerce: 1993/12/01 sound recordings,[prerecorded audio cassettes,] prerecorded compact discs,[prerecorded video cassettes and video discs] all featuring music and musical performances
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Related Proceedings	Opposition No. 91194526
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Attachments	76213094#TMSN.gif (1 page)(bytes) NOO - BWY KIDS CARE and Design.pdf (4 pages)(26933 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/James A. Trigg/
Name	James A. Trigg
Date	04/14/2010

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IDOC PRODUCTIONS, INC.,)	
)	
Opposer,)	
)	
v.)	Mark: B'WY KIDS CARE & Design
)	
BROADWAY KIDS CARE,)	Serial No. 77/790,645
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer, IDOC Productions, Inc. (“IDOC” or “Opposer”), believes that it will be damaged by registration of the B’WY KIDS CARE & Design mark set forth in Application Serial No. 77/790,645, as published in the *Official Gazette* on December 15, 2009 (the “Application”). IDOC has timely filed extensions of time to oppose and now states the following grounds for its Opposition to the Application:

1. IDOC is the creator of The Broadway Kids, a children’s musical group comprised of children with past Broadway or Off-Broadway experience who perform songs from various musicals, appear at special events (including charitable events), and record songs. Since introduction of The Broadway Kids more than fifteen years ago, the group has enjoyed great success in the entertainment field, including release of six albums grossing combined sales of \$4.25 million, staging an Off-Broadway show, and sales of music-related merchandise.

2. IDOC is the owner of all rights in the trademark THE BROADWAY KIDS, used throughout the United States in connection with live musical performances and music-related merchandise (“THE BROADWAY KIDS Mark”). IDOC has obtained two

registrations for THE BROADWAY KIDS Mark: (1) Registration No. 1,957,281 in connection with “entertainment services, namely live performances by a musical group” in International Class 41, claiming a date of first use of December 1993; and (2) Registration No. 2,661,833 in connection with “sound recordings, prerecorded compact discs, all featuring music and musical performances” in International Class 9, claiming a date of first use of December 1993. Both registrations for THE BROADWAY KIDS Mark are now incontestable.

3. By virtue of continuous and extensive use and advertising in connection with IDOC’s goods and services for over fifteen years, THE BROADWAY KIDS Mark is widely and favorably known by the relevant public throughout the United States and is a symbol of the substantial goodwill and recognition established by IDOC for THE BROADWAY KIDS Mark.

4. Applicant Broadway Kids Care (“Applicant”) seeks to register the B’WY KIDS CARE & Design mark shown in Application Serial No. 77/790,645, filed on July 27, 2009, in International Class 36 in connection with “charitable fund raising” (“Applicant’s Mark”), in the format reproduced below:



5. IDOC has continuously used its THE BROADWAY KIDS Mark since prior to Applicant’s application filing date.

6. Applicant's Mark is highly similar in sight, sound, appearance, and commercial impression to IDOC's THE BROADWAY KIDS Mark.

7. IDOC will be damaged by registration of Applicant's Mark because the mark so resembles IDOC's THE BROADWAY KIDS Mark as to be likely to cause confusion, mistake, and/or deception. Consumers familiar with IDOC's THE BROADWAY KIDS Mark, and its products and services, would be likely, erroneously, to believe that Applicant's services are the services of IDOC or are authorized, endorsed, sponsored, or licensed by IDOC. Thus, registration of Applicant's Mark on the Principal Register would be inconsistent with IDOC's rights in its THE BROADWAY KIDS Mark.

8. The required \$300.00 opposition fee is being electronically processed in connection with this Notice of Opposition. The Director is authorized to debit KILPATRICK STOCKTON LLP's Trademark Deposit Account No. 11-0860 for any deficiency in the required fee.

WHEREFORE, IDOC requests that Application Serial No. 77/790,645 be refused in its entirety and that no registration issue thereon to Applicant and, further, that this Opposition be sustained in favor of IDOC.

This 14th day of April, 2010.

Respectfully submitted,

/James A. Trigg/

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Counsel for Opposer IDOC Productions, Inc.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

IDOC PRODUCTIONS, INC.,)	
)	
Opposer,)	
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v.)	Mark: B'WY KIDS CARE & Design
)	
BROADWAY KIDS CARE,)	Serial No. 77/790,645
)	
Applicant.)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Notice of Opposition** was served on Applicant on April 14, 2010 via first class mail addressed to:

Broadway Kids Care
321 West 44th Street, # 603
New York, NY 10036-5455

/James A. Trigg/
Attorney for Opposer

CERTIFICATE OF TRANSMITTAL

I hereby certify that a true and correct copy of the foregoing **Notice of Opposition** is being filed electronically with the TTAB via ESTTA on this day, April 14, 2010.

/James A. Trigg/
Attorney for Opposer